

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARCO ZALDIVAR and ROBERT ERIC  
BURRESS, on Behalf of Themselves and  
Others Similarly Situated,

Plaintiffs,

v.

T-MOBILE USA, INC.,

Defendant.

No. 07-cv-1695 RAJ

[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH  
PREJUDICE

[PROP.] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE – 1  
Case No. 07-cv-1695 RAJ

001993-11 350971 V1



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1 This matter came before the Court for hearing on March 5, 2010, pursuant to the Order  
2 Granting Provisional Certification of Settlement Class and Preliminary Approval of Class Action  
3 Settlement Agreement (dated Sept. 4, 3009, Ct. Rec. 167) ("Preliminary Approval Order"), on  
4 the application of the settling parties for approval of the settlement set forth in the Stipulation of  
5 Settlement Pursuant to Fed. R. Civ. P. 23 (filed June 5, 2009, Ct. Rec. 160) ("Settlement  
6 Agreement"). Due and adequate notice having been given of the settlement as required in said  
7 Order, and the Court having considered all papers filed and proceedings held herein, including  
8 the objection(s) to the proposed settlement or fee application, and otherwise being fully informed  
9 in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED  
10 AND DECREED that:

11 1. This Judgment incorporates by reference the definitions in the Settlement  
12 Agreement, and all terms used herein shall have the same meanings set forth in the Settlement  
13 Agreement.

14 2. This Court has jurisdiction over the subject matter of the Action and over all  
15 parties to the Action, including all Members of the Class.

16 3. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), the Court  
17 certifies the proposed Settlement Class for the purposes of the settlement.

18 4. The Court appoints Plaintiffs Marco Zaldivar and Robert Eric Burress as the  
19 Named Plaintiffs for the Settlement Class.

20 5. The Court designates Hagens Berman Sobol Shapiro LLP as Class Counsel for  
21 the Settlement Class.

22 6. This Court finds and concludes that the applicable requirements of Federal Rule  
23 of Civil Procedure 23(a) and 23(b)(2) have been satisfied with respect to the Settlement Class  
24 and settlement, and specifically, that: (a) the number of members of the Settlement Class are so  
25 numerous that joinder of all members thereof is impracticable; (b) there are questions of law and  
26 fact common to the Settlement Class; (c) Named Plaintiffs' claims are typical of the claims of the

1 Settlement Class they seek to represent; (d) Named Plaintiffs and Class Counsel have fairly and  
2 adequately represented and protected the interests of the Settlement Class and will continue to do  
3 so; and (e) Defendant has acted or refused to act on grounds that apply generally to the class.

4 7. The Action is permanently certified as a class action on behalf of the following  
5 persons (the "Settlement Class"):

6 All current and former T-Mobile subscribers in the United States  
7 who are or were parties to a contract for a wireless telephone  
8 personal account and who never sent a text message but received,  
9 were charged for and paid for text messages while not on a rate  
plan or value bundle plan that included a fixed or unlimited  
number of text messages per month, at any time during the period  
October 1, 2003, to September 4, 2009.

10 8. This certification is for settlement purposes only and shall not constitute, nor be  
11 construed as, an admission on the part of the Defendant that this Action, or any other proposed or  
12 certified class action, is appropriate for any other purpose, including, without limitation, for trial  
13 class treatment.

14 9. Except as to any individual claim of those Persons who have validly and timely  
15 requested exclusion from the Class, the Action and all claims contained therein, including all of  
16 the Released Claims, are dismissed with prejudice as to the Named Plaintiffs and the other  
17 Members of the Class, and as against each and all of the Released Persons. The parties are to  
18 bear their own costs, except as otherwise provided in the Settlement Agreement.

19 10. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court hereby  
20 approves the settlement set forth in the Settlement Agreement and finds that said settlement is, in  
21 all respects, fair, reasonable and adequate to, and is in the best interests of, the Named Plaintiffs,  
22 the Class and each of the Class Members. This Court further finds the settlement set forth in the  
23 Settlement Agreement is the result of arm's-length negotiations between experienced counsel  
24 representing the interests of the Named Plaintiffs, the Class Members and the Defendant.  
25 Accordingly, the settlement embodied in the Settlement Agreement is hereby approved in all  
26

1 respects and shall be consummated in accordance with its terms and provisions. The settling  
2 parties are hereby directed to perform the terms of the Settlement Agreement.

3 11. Upon the Effective Date, the Named Plaintiffs and each of the Class Members  
4 shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever  
5 released, relinquished and discharged all Released Claims against the Released Parties.

6 12. Upon the Effective Date, all Class Members and anyone claiming through or on  
7 behalf of any of them, will be forever barred and enjoined from commencing, instituting,  
8 prosecuting, or continuing to prosecute any action or other proceeding in any court of law or  
9 equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of  
10 the Released Parties.

11 13. Upon the Effective Date hereof, each of the Released Parties shall be deemed to  
12 have, and by operation of this Judgment shall have, fully, finally, and forever released,  
13 relinquished and discharged the Named Plaintiffs, each and all of the Class Members, and Class  
14 Counsel from all claims (including unknown claims), arising out of, relating to, or in connection  
15 with the institution, prosecution, assertion, settlement or resolution of the Action or the Released  
16 Claims.

17 14. The distribution of the notice as provided for in the Preliminary Approval Order  
18 and the Stipulation and Order Supplementing September 4, 2009 Order Granting Provisional  
19 Certification of Settlement Class and Preliminary Approval of Class Action Settlement  
20 Agreement (filed Oct. 2, 2009, Ct. Rec. 169) constituted the best notice practicable under the  
21 circumstances, including individual notice to all Members of the Class who could be identified  
22 through reasonable effort. Said notice provided the best notice practicable under the  
23 circumstances of those proceedings and of the matters set forth therein, including the proposed  
24 settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said  
25 notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of  
26 due process, and any other applicable law.

1           15.     The Court hereby approves the Participation Awards in the amount of \$2,000 to  
2 Plaintiff Marco Zaldivar and \$1,000 to Plaintiff Robert Eric Burress in accordance with the  
3 Settlement Agreement and finds that such awards are fair and reasonable.

4           16.     The Court hereby awards to Class Counsel an award of (a) attorneys' fees in the  
5 amount of \$688,770.45; and (b) reimbursement of expenses in the amount of \$36,229.55. In  
6 making this award of attorneys' fees and reimbursement of expenses, in the amounts described in  
7 this paragraph, the Court has considered and finds as follows:

8                   (a)     The settlement has provided a significant amount of remedial relief to the  
9 Settlement Class, in addition to a charitable contribution to a *cy pres* recipient.

10                  (b)     Notice of the settlement was sent to over 1.7 million class members. Only  
11 two objections were filed against the terms of the proposed settlement.

12                  (c)     Class Counsel have conducted the Action and achieved the settlement with  
13 skill, perseverance and diligent advocacy on behalf of the Plaintiffs and the Settlement Class as a  
14 whole.

15                  (d)     The Action involves complex factual and legal issues and, in the absence  
16 of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.

17                  (e)     Had settlement not been achieved, there would remain a significant risk  
18 that the Settlement Class may have recovered less or nothing from Defendant, and that any  
19 recovery would have been significantly delayed.

20                  (f)     The amount of attorneys' fees and reimbursable expenses awarded to  
21 Class Counsel is fair and reasonable, given the number of attorney hours expended to achieve the  
22 settlement on behalf of Plaintiffs and the Settlement Class as a whole, and the estimated value of  
23 the settlement benefits obtained for the Settlement Class, and the amount awarded is consistent  
24 with awards for similar work in similar cases.

25           17.     Neither the Settlement Agreement, nor any action taken pursuant to the  
26 Settlement Agreement or to implement its terms shall in any event be: (1) construed as, offered

1 or admitted in evidence as, received as and/or deemed to be, evidence for any purpose, other than  
2 such proceedings which may be necessary to consummate or enforce the terms of the Settlement,  
3 except that the Released Parties may file the Final Judgment in any action that may be brought  
4 against them in order to support a defense or counterclaim based on principles of res judicata,  
5 collateral estoppel, release, good faith settlement, judgment bar or reduction; or (2) disclosed or  
6 referred to for any purpose or offered or received in evidence, in any further proceeding in the  
7 Action, or any other civil, criminal or administrative action or proceeding against Defendant or  
8 any of the Released Parties.

9 18. Neither the Settlement Agreement, nor the settlement contained therein, nor any  
10 action taken pursuant to the Settlement Agreement or to implement its terms, is or may be  
11 construed as, or may be used as, an admission by or against the Named Plaintiffs that any of their  
12 claims in the action are or were without merit.

13 19. The Court finds that during the course of the Action, the settling parties and their  
14 respective counsel at all times complied with the requirements of Federal Rule of Civil  
15 Procedure 11.

16 20. In the event that the settlement does not become effective in accordance with the  
17 terms of the Settlement Agreement or the Effective Date does not occur, then this Judgment shall  
18 be rendered null and void to the extent provided by and in accordance with the Settlement  
19 Agreement and shall be vacated and, in such event, all orders entered and releases delivered in  
20 connection herewith shall be null and void to the extent provided by and in accordance with the  
21 Settlement Agreement.

21. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(a) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

THE HONORABLE RICHARD A. JONES  
UNITED STATES DISTRICT JUDGE

Submitted by:

DATED: February 12, 2010

/s/ Jeff D. Friedman  
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Class Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Jeff D. Friedman

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JEFF D. FRIEDMAN



## Mailing Information for a Case 2:07-cv-01695-RAJ

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)